

**CAUSE NO.** \_\_\_\_\_

# JIM WELLS COUNTY, TEXAS

3. Travelers Casualty and Surety Company of America (“Travelers Casualty”) is a Connecticut corporation authorized to do business in Jim Wells County, Texas. It does business in Jim Wells County, and all or a substantial part of the events leading to this lawsuit occurred in Jim Wells County, Texas. Defendant Travelers Casualty may be cited by serving its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite #620, Austin, Texas 78701-3218.

4. Defendant Berkshire Hathaway Specialty Insurance Company (“Berkshire Hathaway”) is a Nebraska corporation authorized to do business in Jim Wells County, Texas. It does business in Jim Wells County, and all or a substantial part of the events leading to this lawsuit occurred in Jim Wells County, Texas. Defendant Berkshire Hathaway may be cited by serving its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite #620, Austin, Texas 78701-3218.

5. Defendant Anderson Columbia Co., Inc. (“Anderson Columbia”) is a Florida corporation authorized to do business in Jim Wells County, Texas. It does business in Jim Wells County, and all or a substantial part of the events leading to this lawsuit occurred in Jim Wells County, Texas. Defendant Anderson Columbia may be cited by serving its registered agent, Cogency Global, Inc., at 1601 Elm Street, Suite 4360, Dallas, Texas 75201.

### **III.**

#### **VENUE**

6. Venue is proper in Jim Wells County in that all or a substantial part of the events or omissions giving rise to the claim occurred in Jim Wells County, Texas. CIV. PRAC. & REM. CODE 15.002(a).

**IV.**

**JURISDICTION**

7. The Court has jurisdiction because Defendant Travelers Casualty is a Connecticut corporation authorized to and doing business in the state of Texas. The Court also has jurisdiction because Berkshire Hathaway is a Nebraska corporation authorized to and doing business in the state of Texas. Further, the Court has jurisdiction because Defendant Anderson Columbia is a Florida corporation authorized to and doing business in the state of Texas. The Court has jurisdiction over the controversy because the damages are within the jurisdictional requirements of this court.

**V.**

**SUMMARY OF FACTS**

8. Anderson Columbia is the general contractor for Jim Wells County, on a project known as Project F2022 (654), US Highway 281 in Jim Wells County, Texas (“US 281 Project”). Anderson Columbia entered into a subcontract agreement with 2J Resources to furnish the materials and labor on the US 281 Project (“Anderson Columbia/2J Resources Subcontract Agreement”).

9. Plaintiff entered into a subcontract agreement with 2J Resources to provide labor and materials to Anderson Columbia for its contracted work on the US 281 Project (“Fulfillsource/2J Resources Subcontractor Agreement”). From June, 2023 through September, 2023, Plaintiff furnished labor and materials to Anderson Columbia for use on the US 281 Project in the amount of \$336,843.86.

10. The US 281 Project is bonded by Travelers Casualty (Bond No. 107578501) with Anderson Columbia, as the principal, and by co-surety Berkshire Hathaway (Bond 47-SUR-

300124-01-0234), with Anderson Columbia as the principal. Travelers Casualty is the lead surety.

11. After 2J Resources failed to pay the amounts due per the Fulfillsource/2J Resources Subcontractor Agreement, Plaintiff properly made a claim under the Payment Bond by (1) sending timely notice to Anderson Columbia for unpaid invoices for labor and materials provided in the months of June, 2023 through September, 2023 on the US 281 Project, and (2) sending Notices of Bond Claim to Anderson Columbia, Travelers Casualty, and Berkshire Hathaway Specialty, on the dates listed in the chart below, with supporting documentation for labor and materials which included the months of June, 2023 through September, 2023 on the US 281 Project (“Bond Claims”). Since that time, Plaintiff has reviewed the Bond Claims, and has determined the following amounts are due:

| <b><u>Amount</u></b>              | <b><u>Dates of Bond Claim</u></b> |                            |
|-----------------------------------|-----------------------------------|----------------------------|
| \$100,305.53                      | 09/15/2023                        | (June 2023 Invoices)       |
| \$ 72,796.97                      | 10/13/2023                        | (August 2023 Invoices)     |
| \$ 92,817.53                      | 11/15/2023                        | (September, 2023 Invoices) |
| \$ 70,923.83                      | 12/15/2023                        | (October, 2023 Invoices)   |
| <b><u>Total: \$336,843.86</u></b> |                                   |                            |

12. Demand was made on Defendants for payment per the terms of the Payment Bond. However, Defendants have refused and continue to refuse to pay the outstanding invoices for labor and materials provided to the US 281 Project for the months of June, 2023 through September, 2023 in the amount of \$336,843.86 in accordance with the terms of the Payment Bond. As a result, Plaintiff was required to retain legal counsel to pursue its legal claims. Notice to the Defendants was timely sent and more than 61 days have elapsed since the notices were sent, and the Defendants have not paid the unpaid balance of \$336,843.86. Therefore, all conditions precedent have been performed or occurred pursuant to TEX. GOVT. CODE 2253 *et seq.*

**VI.**

**COUNT ONE: SUIT ON PAYMENT BOND UNDER SECTION 2253 OF THE TEXAS GOVERNMENT CODE**

13. Plaintiff reincorporates and realleges the factual allegations contained in the preceding paragraphs.

14. Plaintiff has provided public work labor or material under a public work contract for which a payment bond was furnished. Plaintiff provided notices under the Payment Bond, which were mailed more than 61 days ago.

15. The sum of \$336,843.86 is due in accordance with the Payment Bond. Despite notice, Defendants have not made any payment under the Payment Bond to satisfy the unpaid balance of \$336,843.86 for labor and materials provided to the US 281 Project in violation of Section 2253.073 and Sections 2253 *et. seq.* of the Texas Government Code. Accordingly, Defendants are liable, jointly and severally, on the payment bond for the unpaid balance of \$336,843.86 on the bond claims at issue in this lawsuit.

**VII.**

**COUNT TWO: ATTORNEY'S FEES UNDER SECTION 2253.073(b)(2) and 2253.074 OF THE TEXAS GOVERNMENT CODE**

16. Plaintiff reincorporates and realleges the factual allegations contained in the preceding paragraphs.

17. Plaintiff would show the Court that the recovery of attorney's fees and costs is authorized as provided under and according to the provisions of Sections 2253.073(b)(2) and 2253.074 of the Texas Government Code, and Plaintiff further sues for costs and reasonable attorney's fees, including fees for any appeal, insomuch as Plaintiff has been required to employ

the undersigned attorneys to file suit, and have agreed to pay them reasonable attorney's fees for their services. Notice has been presented to Defendants in accordance with the Section 2253 *et. seq.* of the Texas Government Code.

**VIII.**

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Fulfillsource, LLC, d/b/a Crewback, Plaintiff, prays that Defendants Travelers Casualty and Surety Company of America, Berkshire Hathaway Specialty Insurance Company, and Anderson Columbia Co, Inc., be cited to appear herein as provided by law and that upon hearing:

1. Fulfillsource, LLC, d/b/a Crewback, recover against the Defendants, jointly and severally, the sum of \$336,843.86, representing all sums due, under the bond claims at issue in this lawsuit, in accordance with the Payment Bond terms;
2. Plaintiff be awarded its attorney's fees expended in the trial of this matter, as well as conditional awards for any appeals which may be taken herefrom against the Defendants, jointly and severally;
3. Pre-judgment interest at the highest lawful rate as allowed under the Texas Government Code;
4. Post-judgment interest at the highest lawful rate;
5. All costs of court be assessed against Defendants, jointly and severally; and
6. Plaintiff be awarded such other and further relief to which it may show itself justly entitled, either at law or in equity.

Respectfully submitted,

**SCHEEF & STONE, L.L.P.**

By: /s/ Brenda Neuwirt

Richard J. Wallace, III  
State Bar No. 24008224  
Brenda Neuwirt  
State Bar No. 24006807

500 North Akard, Suite 2700  
Dallas, Texas 75201  
(214) 706-4200  
(214) 706-4242 (facsimile)  
[richard.wallace@solidcounsel.com](mailto:richard.wallace@solidcounsel.com)

ATTORNEYS FOR PLAINTIFF  
FULFILLSOURCE, LLC D/B/A CREWBACK

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Loretta Forbey on behalf of Brenda Neuwirt

Bar No. 24006807

loretta.forbey@solidcounsel.com

Envelope ID: 92026127

Filing Code Description: Petition

Filing Description: Plaintiff's Original Petition

Status as of 9/16/2024 9:34 AM CST

Associated Case Party: Fulfillsource, LLC d/b/a Crewback

| Name            | BarNumber | Email                            | TimestampSubmitted   | Status |
|-----------------|-----------|----------------------------------|----------------------|--------|
| Richard Wallace |           | richard.wallace@solidcounsel.com | 9/13/2024 5:29:24 PM | SENT   |
| Brenda Neuwirt  |           | brenda.neuwirt@solidcounsel.com  | 9/13/2024 5:29:24 PM | SENT   |

**EXHIBIT A**